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September 3, 1997

Charles M. Auer
Office of Pollution Prevention and
Toxic Substances
U.S. Environmental Protection Agency
401 M Street S.W. (7405)
Washington, D.C. 20460



Re: HAPS Test Rule for Carbonyl Sulfide: Small Business Impacts

Dear Mr. Auer:

The North American Insulation Manufacturers Association ("NAIMA") would like to take this opportunity to provide our preliminary views on the small business impacts of EPA's proposed test rule for carbonyl sulfide ("COS"). 61 Fed. Reg. 33178 (June 26, 1996). NAIMA is a trade association of North American manufacturers of fiber glass, slag wool and rock wool insulation products. NAIMA's purpose is to promote energy efficiency and environmental preservation through the safe production and use of insulation products.

I. Summary and Background

The manufacturing process that produces rock and slag wool insulation products emits COS into the atmosphere. As a result, rock and slag wool producers may be required to contribute toward the cost of conducting test on COS pursuant to EPA's proposed Hazardous Air Pollutants ("HAPs") test rule under TSCA section 4. The majority of rock and slag manufacturers currently operating in the United States are small businesses. This letter addresses the significant economic impact of the proposed HAPs test rule on rock and slag wool companies.

EPA has to date failed to recognize the significant small business impacts of its proposed test rule on small businesses. NAIMA understands, however, that EPA is currently preparing a revised economic assessment of the impact of the proposed test rule on small businesses. NAIMA is hopeful that EPA's reevaluation of the small business impacts of its proposed rule will provide relief to small businesses from the burdensome impacts of the proposed rule. NAIMA plans to comment further on the small business impacts of the

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proposed HAPs test rule after reviewing EPA's revised economic analysis once it is made public.

The current manufacturers of rock and slag wool products in the United States are American Rockwool, Inc.; Celotex Corporation; Fibrex, Inc.; Isolatek International; MFS Inc.; Rock Wool Manufacturing; Sloss Industries; Thermafiber LLC; USG Interiors Inc.; and Owens Corning. These producers have **fifteen** facilities located in eight states. Six of the ten companies in the rock and slag wool industry (American Rockwool, Inc.; Fibrex, Inc.; Isolatek International; MFS Inc.; Rock Wool Manufacturers and Thermafiber LLC) are small businesses as defined by the Small Business Administration. 13 C.F.R. § 121.601 (defining small businesses in SIC code 3296 (mineral wool) as businesses with less than 750 employees). None of the **small** business rock and slag wool manufacturers meet the exemption for small businesses that manufacture less than 1,100 pounds annually of the chemical as provided for in EPA's regulations implementing TSCA § 4. 40 C.F.R. § 790.42(a)(4).

In recent years, several rock and slag wool companies have gone out of business, and several of the existing companies are currently in, or have recently emerged from, bankruptcy. Due to the current economic condition of the industry, no new plants or manufacturing lines are planned during the next five years. Rock and slag wool companies are currently facing several other expensive regulatory requirements that are scheduled to be implemented in the same time period as the proposed HAPs test rule for carbonyl sulfide, including a new MACT standard for mineral wool proposed by EPA in May 1997. 62 Fed. Reg. 25370 (May 8, 1997).

II. EPA's Proposal

EPA's HAPs test rule published on June 26, 1996 proposed a very extensive and burdensome set of testing requirements for COS. EPA proposed acute, subchronic, developmental, reproductive, neurotoxicity, carcinogenicity, gene mutation, in vivo cytogenetics and immunotoxicity tests for COS -- essentially including every type of testing available in EPA's TSCA test rule arsenal. EPA estimates the total test costs at over \$5.5 million, the second most expensive set of tests for any of the 21 hazardous air pollutants included in the HAPS test rule.

As will be demonstrated in public comments to be filed by NAIMA and other commenters, the proposed test regime for COS is grossly disproportionate to any legitimate data needs. COS is likely to be one of, if not the, least toxic of the 189 hazardous air pollutants listed in section 112(b)(1) of the Clean Air Act. Indeed, there seems to have been very little basis to have included COS on the HAPS list in the first place, as there is no indication that COS presents any significant risks to human health or the environment. In fact, COS is naturally present in the atmosphere at relatively high concentrations that are not significantly affected by the byproduct emissions of COS from rock and slag wool and other manufacturing processes.

In proposing its **HAPs** test rule, EPA concluded that the rule, if promulgated, “would not have a significant economic impact on small businesses.” 61 Fed. Reg. at 33196. EPA based this conclusion on the following three findings:

“(1) small businesses would not be expected to perform testing themselves, or to participate in the organization of the testing effort, because health effects testing of chemical substances is generally carried out by consortia of the large manufacturers or importers of the chemical substances;

“(2) **small** businesses would experience only very minor costs, if any, in securing exemption from testing requirements and

“(3) small businesses are unlikely to be affected by reimbursement requirements because under the reimbursement rules manufacturers or importers with a significant share of production or importation are the entities that must share testing costs under the reimbursement rules, and small businesses generally do not manufacture or import a significant portion of high-volume chemical substances.”

61 Fed. Reg. at 33196.

III. Impacts of EPA’s Rule on Small Businesses

At least with respect to the COS portion of the proposed **HAPs** test rule, EPA’s findings that the test rule will not have a significant economic impact on small businesses is clearly erroneous. EPA’s finding that small businesses are unlikely to be significantly affected by test rules because they are not a substantial producer or importer of the test substance may be accurate for most test rules, but is not necessarily the case for the COS test rule. The COS test rule is unique and unprecedented in that there is no commercial production or import of COS, and thus the typical criteria used under TSCA §4 such as commercial production or sales cannot be used to allocate costs for the COS testing. Because of process and other differences between industries, emissions of COS from several different types of industries are less correlated with company size than production or sales volume for most test chemicals. EPA therefore has no basis to simply presume without any analysis that small businesses emitting COS will not incur a significant share of testing costs.

The available information suggests that rock and slag wool manufacturers that are small businesses will indeed be substantially impacted by the COS test rule. The Chemical Manufacturers Association (“CMA”) has established a panel of companies that emit COS, on which NAIMA is participating. The proposed approach being discussed by that Panel

for allocating testing costs is in proportion to TRI emissions. Under this formula, rock and slag wool companies, including those that are small businesses, would be expected to pay a substantial portion of the \$5.5 million in test costs proposed by EPA.

The TRI data used to develop EPA's proposal reports 12.8 million pounds of COS emissions in 1993. See EPA, TSCA 4 Findings for HAPs, at 9. These data do not include COS emissions from rock and slag wool facilities, as the presence of COS in the rock and slag wool exhaust gases was just recently detected as part of the mineral wool MACT development, and thus most rock and slag wool companies will report COS emissions on the TRI for the first time in 1996. During the recent development of the mineral wool MACT standard, EPA estimated that the rock and slag wool industry emits 2775.6 tons of COS per year (5.551 million pounds per year). EPA, ***Revised Technical Background Information: Mineral Wool MACT***, at p. 2-20. Combining the TRI COS emissions with EPA's estimate of the rock and slag wool COS emissions results in total COS emissions of 18.35 million pounds per year, of which rock and slag wool manufacturers emit 5.55 million pounds or 30.25 percent of total COS emissions.

Applying the CMA Panel formula for allocating testing costs, rock and slag wool manufacturers would be required to pay 30.25 percent of the \$5.5 million estimated testing costs, or \$1.67 million. The six small business rock and slag wool manufacturers operate 18 of the 27 cupolas in the industry with uncontrolled COS emissions, and therefore would be required to pay under the CMA Panel formula approximately \$1.1 million of the testing costs.

To assess the economic impact of these projected testing costs on the small business rock and slag wool manufacturers, NAIMA retained the accounting firm of Price Waterhouse LLP to analyze the economic impact of these costs. Price Waterhouse had conducted a confidential economic survey of all rock and slag wool manufacturers in 1996, and used that data to analyze the economic impact of the proposed COS test rule on the six small business rock and slag wool manufacturers. Price Waterhouse's analysis concluded that the COS testing costs would exceed one percent of total revenues and/or ten percent of net income before tax for five of the six small rock and slag wool producers. (Attachment 1) For the six small manufacturers together, the test costs would represent 19.8 percent of net income before taxes.

This analysis demonstrates that the proposed COS test costs, if allocated according to the CMA Panel method, would have a very burdensome economic impact on small businesses. Because these costs would be incurred in the same time period as other costs imposed by regulatory requirements such as EPA's MACT standard, the incremental costs of the COS test rule are likely to severely affect the economic viability of many of the small business rock and slag wool manufacturers.

IV. The Counter-Productive Consequences of EPA's Rule

Since the rock and slag wool industry is facing significant **financial** challenges, EPA's conclusion that the **HAPs** Test Rule will not have a significant economic impact on small businesses is particularly frustrating to the industry. This frustration is exacerbated due to repeated efforts on the part of the industry to communicate to EPA's economic consultant and others involved in the preparation of the economic analysis that small businesses would indeed suffer significant economic impact if the COS test rule moved forward. At each turn, industry representatives were informed that the economic analysis was near completion and the industry was too late to submit additional information.

The consequences of EPA's COS test rule may be to put many rock and slag wool manufacturers out of business, which would have tragic consequences for the workers at such facilities and would at the same time be counter-productive for the environment given the important ecological benefits provided by rock and slag wool products. The manufacturers of rock and slag wool make products that promote energy **efficiency** and prevent pollution by reducing greenhouse gas emissions. By reducing the demand for energy, rock and slag wool insulation products help conserve nonrenewable fuel supplies and reduce the amount of pollutant that are released into the atmosphere through the burning of fossil fuels. Pollutants like carbon dioxide, released when fuel is burned to heat or cool a home, contribute to climate change.

The environmental implications of energy savings are directly linked to global climate change because less energy consumption means less emission of greenhouse gases. A 1996 report on the environmental and energy saving benefits of rock and slag wool insulation found that "a typical pound of insulation saves twelve times as much energy in its first year in place as the energy used to produce it." The report goes on to say that current fiber glass and rock and slag wool insulation levels save consumers nearly \$84 billion a year in heating and cooling costs.

Not only do rock and slag wool products save energy, but these same products use a high percentage of recycled material, which further helps the environment. The use of recycled material marks a shift from reliance on extracting natural resources to using materials derived from secondary sources. In addition to reducing the demand on virgin resources, using recycled materials saves **landfill** space by diverting materials from the solid waste stream, and reduces the energy used and pollution emitted during the manufacturing process. Slag wool products not only divert blast furnace slag from being sent to a landfill, but a significant portion of slag used to make slag wool insulation is actually removed from waste disposal sites.

To minimize the unnecessary and tragic economic and environmental impacts of EPA's proposed COS test rule, NAIMA encourages EPA to consider alternatives that would be less burdensome on small businesses. NAIMA remains ready and willing to meet with EPA in any forum or at any time to discuss less burdensome alternatives.

Sincerely,

A handwritten signature in black ink that reads "Angus E. Crane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Angus E. Crane
General Counsel

cc: William H. Sanders III, EPA OPPTS
Richard Leukroth, EPA OPPTS
Karen V. Brown, EPA Small Business Ombudsmen
Tom Kelly, Chair, Small Business Advocacy, EPA
Kevin Bromberg, Small Business Administration